

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS FERREIRA,

Plaintiff,

-against-

ORDER
CV 12-2620 (JFB)(ARL)

TOWN OF EAST HAMPTON, et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the defendants' letter application dated March 18, 2014, requesting that the court compel non-party witnesses, Austin Manghan, Esq. and Thomas Horn, Esq., to respond to the document requests set forth in subpoenas served on them on September 19 and 24, 2013, respectively. According to the defendants, Messrs. Manghan and Horn both appeared for depositions, but failed to produce the requested documents. However, at or following the depositions both witnesses agreed to produce non-privileged materials in their files. Neither witness has objected to the document requests or responded to this motion. The plaintiff has also not responded to the motion.

Absent an improperly issued subpoena or an "adequate excuse" by the non-party, failure to comply with a subpoena made under Rule 45 may be deemed a contempt of the court from which the subpoena issued. Fed. R. Civ. P. 45(e). Indeed, the judicial power to hold a non-party who has failed to obey a valid subpoena in contempt is the primary mechanism by which a court can enforce a subpoena. See Practice Commentary to Rule 45(e). Having examined the subpoenas and the deposition transcript from the Manghan deposition, the court finds that the subpoenas in question were valid and properly served upon the deponents. Accordingly, Messrs. Manghan and Horn are directed to produce the non-privileged documents requested in their respective subpoenas by April 4, 2014.

The defendants' request to have the undersigned recommend that Messrs. Manghan and Horn be held in contempt is denied, at this time. However, both gentleman are warned that if they fail to comply with this order, they could be subject to contempt proceedings before the district judge for failure to respond to the subpoena and this order. The plaintiff is directed to serve a copy of this order on Messrs. Manghan and Horn by certified mail.

Dated: Central Islip, New York
March 27, 2014

SO ORDERED:

/s/
ARLENE ROSARIO LINDSAY
United States Magistrate Judge